

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
TERRE HAUTE DIVISION

BOBBY JOE MANN,)
)
)
Plaintiff,)
)
vs.) Case No. 2:13-cv-00341-JMS-WGH
)
)
CRAIG APKER Warden, Tucson USP,)
BAILEY Dr., MD, BILILA Lt., PHS,)
GARY HENDERSON MD PC, RYAN)
JOHNSON, RASHID KHAN MD, individual)
capacity & official capacity, KIMBERLY)
KLINK AHS, individual capacity & official)
capacity, PAUL LAIRD RD, individual)
capacity & official capacity, THOMAS)
LONGFELLOW DO, individual capacity &)
official capacity, CATRINA MEYERS LPN,)
individual capacity & official capacity,)
RUPSKA Mr., TAUB Mr.,)
)
Defendants.)

Entry Discussing Complaint and Severing Certain Claims

I.

Plaintiff Bobby Joe Mann, a federal prisoner, was recently transferred from the United States Penitentiary in Tucson, Arizona (“USP-Tucson”) to the Federal Correctional Institution in Terre Haute, Indiana (“FCI-Terre Haute”). In this civil rights action, Mann alleges that this Eighth Amendment right to constitutionally adequate medical care was violated by Bureau of Prisons employees in both Arizona and Indiana. Mann seeks a declaratory judgment, injunctive relief and money damages.

As presented, the complaint violates Rule 20 of the *Federal Rules of Civil Procedure*. Rule 20 allows joinder of multiple parties only when the allegations against them involve the

same conduct or transaction and common questions of fact and law as to all defendants. That standard could not be met as to the medical care Mann received while confined at the USP-Tucson and that being provided at the FCI-Terre Haute. In such a situation, ~~A[t]he~~ court may . . . sever any claim against a party.[@] FED. R. CIV. P. 21. Generally, if a district court finds that a plaintiff has misjoined parties, the court should sever those parties or claims, allowing those grievances to continue in spin-off actions, rather than dismiss them. *Elmore v. Henderson*, 227 F.3d 1009, 1012 (7th Cir. 2000). Severance preserves rights that depend on the date that the complaint was filed, such as defenses to applicable statutes of limitation. *Id.*

That is the remedy which will be applied to the complaint.

II.

Consistent with the foregoing, the claims against the Arizona defendants—Warden Craig Apker, Dr. Gary L. Henderson, Nurse Ryan Johnson, Dr. Rashid Khan, Dr. Thomas Longfellow and Nurse Catrina Meyers—are **severed from the original complaint**. To effectuate this ruling, one new civil action from the Terre Haute Division shall be opened, consistent with the following:

- a. Bobby Joe Mann shall be the plaintiff in the newly opened action.
- b. The defendants in the newly opened action shall be Warden Craig Apker, Dr. Gary L. Henderson, Nurse Ryan Johnson, Dr. Rashid Khan, Dr. Thomas Longfellow and Nurse Catrina Meyers.
- c. The Nature of Suit in the newly opened action shall be 555.
- d. The Cause of Action of the newly opened action shall be 28:1331 (Federal Question: Bivens Act).
- e. The complaint in this action shall be filed and re-docketed as the complaint in the newly opened actions. Mann's request to proceed in forma pauperis shall likewise be filed and re-docketed in the newly opened action.

- f. A copy of this Entry shall be docketed in the newly opened action.
- g. This action and the newly-opened action shall be shown with this action and with each other as linked actions.

III.

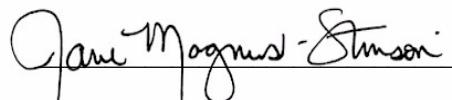
Claims in the newly-opened action are distinct from those in this action.

Consistent with the determination and rulings made in Part II of this Entry, all claims against Warden Craig Apker, Dr. Gary L. Henderson, Nurse Ryan Johnson, Dr. Rashid Khan, Dr. Thomas Longfellow, and Nurse Catrina Meyers are dismissed without prejudice and terminated in this action.

The action docketed as No. 2:13-cv-341-JMS-WGH shall reflect Dr. Bailey, Lt. Bilila, Kimberly Klink, Paul Laird, Mr. Rupska, and Mr. Taub as the defendants.

IT IS SO ORDERED.

Date: 09/23/2013



Hon. Jane Magnus-Stinson, Judge
United States District Court
Southern District of Indiana

Distribution:

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